IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.6588 OF 2005

State of Maharashtra .. Applicant

Versus

Babaurao B. Salunkhe & Ors. .. Respondents

Mr.K.V.Saste, A.P.P. for Applicant

Mr.Nitin Jamdar with S.S.Salunkhe for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 14th December 2005.

P.C.

. Heard Mr.Saste in support and Mr.Jamdar for respondent Nos. 1 to 3.

2. This Court by an order dated 18th October 2005 had taken cognisance of this application only insofar as respondent Nos. 1 to 3 and directed issuance of notice to them. Application, in my view, therefore, deserves to be dismissed as far as respondent Nos. 4 to 6.

3. Mr.Saste makes a serious grievance that the learned Additional Sessions Judge, Pandharpur has enlarged respondent Nos. 1 to 3 on bail vide order dated 31st May 2005. It is not disputed that these respondents stand arrayed as accused in connection with C.R.No.78 of 2005 registered at Pandharpur Taluka Police Station for offences punishable under section 302, 143, 147 to 149 of I.P.C.

4. Mr.Saste states that the Court below has not even perused statement of eye witness Mahadeo Karpe, father of deceased. He submits that this

witness has clearly deposed that his son was working with him at the farm at 5.00 a.m. and at about 6.00 a.m. respondent Nos. 1 to 3 came near his field and when the deceased was watering his crops, the assault took place with sharp edged weapons. He was assaulted with a sword and axe. The deceased was also assaulted with kick blows by others. Mr.Saste states that the statement read in its entirety does not appear to be vague as is termed by the learned Judge. Specific acts attributable to each of these accused as also details of the weapons are found in the statement. In his submission, the learned Judge should not have overlooked this statement and when the charge is as serious as under section 302, should not have enlarged respondents on bail during the pendency of investigation. He states that accused were arrested on 21st April 2005. Search was made on 29th April 2005 and the bail application is decided on 31st May 2005. Pendency of civil litigation has influenced

learned Judge to a great extent but that aspect is wholly irrelevant, according to Mr.Saste.

5. Mr.Jamdar appearing for respondent Nos. 1 to 3 on notice states that this Court is not powerless in going into the merits of the matter even at this stage, if a case is made out for exercise of jurisdiction under section 439(2) of Cr.P.C. However, this Court should refrain from doing so because trial has proceeded and the matter stands at the stage of framing charges before the fast track court. He states that considering pendency of cases before fast track court, the trial would not be delayed and can be concluded expeditiously. Further, according to him applicants have not misused the liberty. There are no allegations that they have tampered with prosecution witnesses or have otherwise violated the conditions imposed upon them by the trial court. According to Mr.Jamdar, therefore, no useful purpose will be served in now going

into this matter and it would be proper if this Court issues directions to conclude the trial expeditiously and impose further conditions as this Court deems fit and proper.

6. After perusal of the roznama, a copy of which is handed over by Mr.Jamdar, in my view, instead of considering the present application, at this stage, it would be desirable if appropriate directions are issued to conclude the trial. The matter is placed today before the trial court for framing charges. Respondent No.1 is 55 years of age whereas the respondent Nos. 2 and 3 are aged 23 and 22 years respectively. As far as first respondent is concerned, in my view, his presence for the agricultural operations would not in any manner hamper the case of prosecution. This application as far as respondent No.1 is concerned is also not pressed very seriously at this stage. First respondent, however, to abide by all such conditions as are

imposed and if prosecution notices any breach of the said conditions, it would be open for prosecution to apply for the reliefs in terms of present applicant afresh. Neither the disposal nor order of the trial court would constitute a bar for prosecution in making such an application nor for this court to consider the same.

7. As far as respondent Nos. 2 and 3 are concerned the proper course would be to direct them to not to enter the place where the crime was committed i.e. Khed Bhalwani. Respondent Nos.2 and 3 would therefore, continue to reside at Pandharpur and will not enter village Khed Bhalwani till the trial is concluded. Needless to state that prosecution can apply for cancellation of bail not only in the case of violation of earlier conditions but also in case it is noticed that the present condition is violated by these accused.

8. It is made clear that this order is passed only in the light of the fact that trial has commenced. The trial court should ensure that the trial is concluded within six weeks from the date of receipt of this order.

9. In addition to the conditions imposed on the respondent Nos.1 to 3 by the trial Court as far as respondent Nos. 2 and 3 are concerned, it is directed that they shall not enter village Khed Bhalwani and would reside at Pandharpur till the trial is concluded.

10. Before parting, it needs to be stated that order enlarging applicants (respondent No.1 to 3) has been passed rather casually by the trial court. It is expected that the trial court applies its mind to all aspects of the matter. In the latest decision of the Supreme Court, reported in 2005 (8) S.C.C. 21, the Supreme Court has laid down the factors which are to be

taken into consideration while releasing applicants on bail. It does not appear to me that the trial court was aware of its duty and obligation in law while considering applicant's application for bail. The trial court ought to be careful in such matters and especially when accused are charged with offence punishable under section 302 of I.P.C. Application disposed of with liberty as prayed.

11. Respondent Nos. 2 and 3 are at liberty to apply for modification of condition about residence in case facts and circumstances so necessitate.

(S.C.DHARMADHIKARI, J)